

PHILIP JAMES OSTRANDER, #1124822  
AUGUSTA CORRECTIONAL CENTER  
1821 ESTALINE VALLEY ROAD  
CRAIGSVILLE, VIRGINIA 24430

July 9, 2014

Clerk  
United States Court of Appeals  
Fourth Circuit  
United States courthouse Annex, 5<sup>th</sup> Floor  
1100 East Main Street  
Richmond, VA 23219

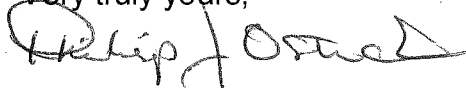
RECEIVED  
2014 JUL 15 AM 10:05  
U.S. COURT OF APPEALS  
FOURTH CIRCUIT

Re: Ostrander v. Director, VDOC,  
Record No.: 146939 / Appellate No." 3:13-cv-00634-JRS

Dear Clerk:

Enclosed please find my Motion to Amend "Issues Presented"  
Page of Petition for Appeal. Please present this Motion to the Court at your first  
convenience. Thank you.

Very truly yours,



Philip J. Ostrander

Encl.: Motion to Amend

Cc: Kathleen Martin

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

PHILIP J. OSTRANDER,

Petitioner / Appellant,

v.

**RECORD NO.: 146939**

Appellate No. 3:13-cv-00634-

District Court No.: 3:13cv634

DIRECTOR, VIRGINIA DEPT. OF CORRECTIONS,

Respondent / Appellee

MOTION TO AMEND "ISSUES PRESENTED"

PAGE OF PETITION FOR APPEAL

COMES NOW, your Appellant, Philip James Ostrander ("Ostrander"), *pro se*, pursuant to Rule 27 Federal Rules of Appellate Procedure, and moves this Court to allow him to amend the "issues presented" page of his petition for appeal. In support of this Motion Ostrander states as follows:

1. Per this Court's Informal Briefing Order, Ostrander had until July 15, 2014, to file his petition for appeal of the final Order of the U.S. District Court for the Eastern District of Virginia, dated May 23, 2014, denying and dismissing his 28 U.S.C. § 2254 habeas corpus petition.
2. On July 9, 2014, Ostrander did mail to the court his petition for appeal wherein he presented three issues for review. However, upon review of his copy of the petition Ostrander realized that Issue -1 on the page entitled "Issues

Presented” of his petition for appeal was factually incorrect regarding procedural matters in the state court. Specifically, Issue -1 inaccurately states:

THE DISTRICT COURT ERRED WHEN IT FOUND OSTRANDER’S TIME FOR FILING HIS FEDERAL HABEAS PETITION WAS NOT STATUTORILY TOLLED FROM THE TIME THE STATE CIRCUIT COURT DENIED HIS *APPEAL* ON THE GROUNDS THAT HIS NOTICE OF APPEAL TO THE *VIRGINIA SUPREME COURT* WAS UNTIMELY FILED WHERE OSTRANDER FILED HIS NOTICE OF APPEAL IN THE TIME AND MANNER AS DIRECTED BY THE STATE CIRCUIT COURT.


However, Issue -1 *should* state:

THE DISTRICT COURT ERRED WHEN IT FOUND OSTRANDER’S TIME FOR FILING HIS FEDERAL HABEAS PETITION WAS NOT STATUTORILY TOLLED, FROM THE TIME THE STATE CIRCUIT COURT DENIED HIS ***HABEAS PETITION UNTIL THE SUPREME COURT OF VIRGINIA DENIED HIS PETITION FOR APPEAL***, ON THE GROUNDS THAT HIS NOTICE OF APPEAL TO THE ***STATE CIRCUIT COURT*** WAS UNTIMELY FILED WHERE OSTRANDER FILED HIS NOTICE OF APPEAL IN THE TIME AND MANNER AS DIRECTED BY THE STATE CIRCUIT COURT.

3. The other two issues presented for appellate review remain the same.
4. Ostrander hereby attaches his proposed AMENDED ISSUES PRESENTED by which it is his intent to supplant entirely the prior page entitled ISSUES PRESENTED.

WHEREFORE, Ostrander, having shown said amendment to be in the interest of justice and that the respondent will not be prejudiced by said amendment, moves this Court to supplant the current page entitled *Issues Presented* with the attached page entitled *Amended Issues Presented*, and to provide any other relief the court deems just and equitable.

Respectfully submitted,

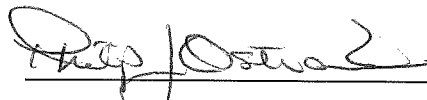


Philip J. Ostrander, *pro se*

Philip James Ostrander #1124822  
Augusta Correctional Center  
1821 Estaline Valley Road  
Craigsville, Virginia 24430

CERTIFICATE OF SERVICE

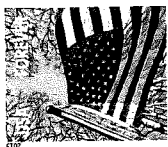
I certify that on July 11th, 2014, I did mail a copy of the foregoing *Motion To Amend "Issues Presented" Page Of Petition For Appeal* and the proposed *Amended Issues Presented*, first-class postage prepaid, to counsel for respondent herein, Kathleen B. Martin, Senior Assistant Attorney General, 900 East Main Street, Richmond, Virginia 23219.



Philip J. Ostrander, *pro se*

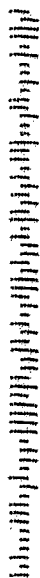
AMENDED ISSUES PRESENTED

1. THE DISTRICT COURT ERRED WHEN IT FOUND OSTRANDER'S TIME FOR FILING HIS FEDERAL HABEAS PETITION WAS NOT STATUTORILY TOLLED, FROM THE TIME THE STATE CIRCUIT COURT DENIED HIS HABEAS PETITION UNTIL THE SUPREME COURT OF VIRGINIA DENIED HIS PETITION FOR APPEAL, ON THE GROUNDS THAT HIS NOTICE OF APPEAL TO THE CIRCUIT COURT WAS UNTIMELY FILED WHERE OSTRANDER FILED HIS NOTICE OF APPEAL IN THE TIME AND MANNER AS DIRECTED BY THE STATE CIRCUIT COURT.
2. THE DISTRICT COURT ERRED WHERE IT FOUND OSTRANDER'S FEDERAL HABEAS PETITION UNTIMELY BECAUSE OSTRANDER DID NOT QUALIFY FOR EQUITABLE TOLLING AFTER THE STATE CIRCUIT COURT DISMISSED HIS HABEAS PETITION ON FEBRUARY 13, 2013, BECAUSE HE DID NOT THEN FILE A PROTECTIVE PETITION TO STAY AND ABBEY FEDERAL HABEAS PROCEDURES UNTIL HIS STATE REMEDIES WERE EXHAUSTED.
3. THE DISTRICT COURT ERRED WHERE IT FOUND THE VIRGINIA SUPREME COURT'S DENIAL OF OSTRANDER'S NOTICE OF APPEAL AS UNTIMELY WAS BASED UPON AN ADEQUATE AND INDEPENDENT STATE PROCEDURAL RULE.

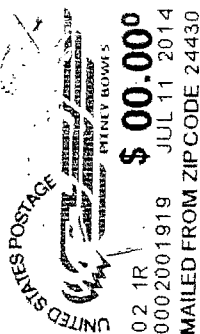


JUL 15 2014

CLERK  
U.S. COURT OF APPEALS  
FOURTH CIRCUIT  
U.S. COURTHOUSE ANNEX (5TH FL.)  
1100 EAST MAIN ST.  
RICHMOND, VA 23219



2021953517



VA DOC NEITHER CENSORED  
NOR INSPECTED THIS ITEM AND  
ASSUMES NO RESPONSIBILITY  
FOR ITS CONTENTS

RECEIVED  
JUL 11 2014  
OUTGOING LEGAL MAIL

LEGAL  
MAIL

PHILIP OSTRANDER, 1124822  
ACC  
1821 ESTALING VALLEY RD.  
CRAIGSVILLE, VA 24430